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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 321/2007

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by	Kwami Mopongo and others (represented by counsel, Mr. Alberto J. Revuelta)
Alleged victim	The complainants
State party	Morocco
Date of complaint	28 March 2007 (initial submission)
Date of decision	7 November 2014
Subject matter	Expulsion of the complainants to a State where they are in danger of being subjected to torture
Procedural issues	Exhaustion of domestic remedies (art. 22, para. 5 (b)); unfounded claims
Substantive issues	Cruel, inhuman or degrading treatment; non-refoulement
Articles of the Convention	3 (para. 1) and 16 (para. 1)

[Annex]

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 321/2007

Submitted by:	Kwami Mopongo and others (represented by counsel, Mr. Alberto J. Revuelta)
Alleged victim:	The complainants
State party:	Morocco
Date of complaint:	28 March 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 November 2014,

Having concluded its consideration of communication No. 321/2007, submitted to the Committee against Torture on behalf of Kwami Mopongo and others under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are:

1. Kwami Mopongo, national of the Democratic Republic of the Congo, born on 7 May 1973;

2. Bamba Arouna, national of Côte d'Ivoire, born on 10 October 1985;

3. Berte Souleymane, national of Côte d'Ivoire, born on 31 July 1981;

4. Roger Ziwambaza, national of the Democratic Republic of the Congo, born on 3 August 1973;

5. Fofana Sidou, national of Côte d'Ivoire, born on 7 November 1989;

6. Lacine Cherifou, national of Côte d'Ivoire, born on 1 August 1985;

7. Aboubakar Doukoure, national of Côte d'Ivoire, born on 21 December 1974;

8. Coulibaly Keting, national of Côte d'Ivoire, born on 6 April 1968;

9. Onina Nzimbakani, national of the Democratic Republic of the Congo, born on 30 June 1975;

10. Milandu Reunne, national of the Democratic Republic of the Congo, born on 24 November 1995;

11. Samba Thimoye, national of the Republic of the Congo, born on 21 July 1969;

12. Keita Adama, national of Côte d'Ivoire, born on 3 June 1966;

13. Kande Dumba, national of Côte d'Ivoire, born on 2 February 1981;

14. Fofana Konoba, national of Côte d'Ivoire, born on 11 January 1980;

15. Bakayoko Mamadou, national of Côte d'Ivoire, born on 28 January 1978;

16. Marceline Bongo, national of the Democratic Republic of the Congo, born on 4 August 1978;

17. Simon Willy Bongo, national of the Democratic Republic of the Congo, born on 27 December 1979;

18. Ernest Koblan Adjobia, national of Côte d'Ivoire, born on 7 November 1972;

19. Richard Mayemba, national of the Democratic Republic of the Congo, born on 1 January 1965;

20. Sekou Camara, national of Côte d'Ivoire, born on 15 October 1978;

21. Bulamba Sezzi, national of the Democratic Republic of the Congo, born on 5 March 1970;

22. Thomas Ndombele, national of the Democratic Republic of the Congo, born on 20 October 1980;

23. Makonzi Mboka, national of the Democratic Republic of the Congo, born on 2 July 1974;

24. Fodé Camara, national of Côte d'Ivoire, born on 1 January 1978;

25. Mohamed Diakete, national of Côte d'Ivoire, born on 1 August 1960;

26. Boua Kobena Sekre, national of Côte d'Ivoire, born on 23 January 1970;

27. Lansine Suhadro, national of Côte d'Ivoire, born on 25 May 1978;

28. Aboubakar Sidiki Sangaré, national of Côte d'Ivoire, born on 1 June 1978;

29. Fadiga Sekou Abdourahim, national of Côte d'Ivoire, born on 25 May 1978;

30. Alhassane Soumah, national of Côte d'Ivoire, born on 5 November 1977;

31. Koké Aboubakar, national of Côte d'Ivoire, born on 12 January 1963;

32. Gaston Kandu, national of the Democratic Republic of the Congo, born on 20 June 1960;

33. Coulibaly Soumaila-Smael, national of Côte d'Ivoire, born on 22 September 1981;

34. Paulina Mbemba Makiesse, national of Angola, born on 25 July 1990.

1.2 The complainants are represented by counsel, Mr. Alberto J. Revuelta.

The facts as submitted by the complainants

2.1 Very early in the morning of 24 December 2006, police officers, gendarmes and members of the auxiliary forces (civilian informers who cooperate with the police in working-class neighbourhoods) conducted a raid in the districts of Aynnada, Takadoum, Ain Sinai, Yousoufia and Khalouia in Rabat and broke into lodgings occupied by immigrants and refugees of sub-Saharan origin. Some 248 people were arrested and taken by force to Aynnada police station. The next day the *Assabah* newspaper reported that the authorities had conducted the operation as part of their efforts to combat illegal immigration and human trafficking in cooperation with the European Union and the Spanish authorities. Forty-two of the persons arrested had applied for asylum at the Morocco field office of the United Nations High Commissioner for Refugees (UNHCR) in Rabat. UNHCR had recognized their status as refugees and had supplied them with documents attesting to that fact. Thirty-four of these 42 individuals are the complainants in this communication.[1]

2.2 According to the complainants, the police entered their lodgings and arrested them without a warrant. In addition, the police officers damaged the immigrants' belongings, stole money and personal effects from them, destroyed identity papers and broke doors and windows. The immigrants were then thrust into police vans and driven to the police station. Some of them, such as Thomas Ndombele and Alhassane Soumah, were struck. Gaston Kandu had an anxiety attack at the police station, went into convulsions, lost consciousness and had to be taken to hospital. At the police station, the detainees asked to talk to the police chief so that they could show him the documents issued by UNHCR, but were not allowed to do so. They were not assisted by a lawyer and were not brought before a judge.

2.3 The police officers put the detainees in buses, which left first thing in the morning. The detainees had nothing to eat or drink for several hours, and it was not until 3 p.m. that they were given bread and water. Nor had they been allowed to urinate before setting off. One group arrived at the town of Oujda, some 15 kilometres from the Algerian border, at around 6 p.m. on 24 December. Another group was taken directly to the border area, without passing through Oujda, and arrived at about 8 p.m. These people were then left in the middle of the desert, with no protection, having barely eaten anything and with no warm clothing or food, and were ordered to walk until they reached Algerian territory. Around midnight, a third group also arrived at the border and was abandoned in the same way as the others. They were all warned that they would be shot at if they attempted to return to Morocco. When they tried to enter Algeria, Algerian soldiers fired shots in the air, struck them and forced them back into Moroccan territory. It should be noted that the border in that area has been closed since 1994. The Algerian and Moroccan security forces robbed them of the few belongings they had left, including, in some cases, their shoes.

2.4 The complainants were thus obliged to return to Oujda, walking through the desert in the intense cold of the night, without suitable clothing, some barefoot, and having eaten hardly anything in 24 hours. At least two of the women were raped by unknown gunmen who were in the vicinity. The majority of those who returned to Oujda stayed there for between 4 and 10 days on the premises of either the university or the Catholic church. They were given clothing and food by a Moroccan association and by Médecins sans Frontières.

The complaint

3.1 The complainants allege that the acts reported in the above account were committed intentionally and caused them pain and suffering amounting, at the least, to cruel, inhuman or degrading treatment, in breach of article 16, paragraph 1, of the Convention.

[1] These persons' UNHCR file numbers, which were assigned to them when they were granted refugee status under the Convention relating to the Status of Refugees, are included in the complainants' initial submission.

3.2 The State party expelled the complainants without giving them the opportunity to appear before a court or to be assisted by a lawyer. Moreover, the police records contain no mention of any statements made by them. Nor was Moroccan law complied with: according to article 24 of Act No. 2-03 on the entry and residence of foreign nationals in Morocco and illegal emigration and immi_ration, an expulsion order must not be carried out until 48 hours have elapsed since the person in question has been notified. The law also provides that in the 48 hours following notification, the person concerned may lodge a request for annulment with the presiding judge of the administrative court in a public hearing and that the applicant may request the assistance of an interpreter and a lawyer for that purpose. In this case, the complainants received no notification at all, and none of the aforementioned rules of procedure were followed.

The State party's observations on admissibility

4.1 In a note verbale dated 13 August 2007, the State party challenges the admissibility of the complaint. The State party argues, in the first place, that the communication is unfounded, since no expulsion order was issued in respect of the complainants. Government authorities and the public prosecutor's office did issue an expulsion order under Act No. 2-03 on 23 December 2006 in respect of 230 sub-Saharan immigrants in an irregular situation, but the complainants were not among those named in that order. In the wake of the media campaign that followed this operation, the General Secretary of the Ministry of Foreign Affairs and Cooperation met with the Chief of Mission of the Office of the United Nations High Commissioner for Refugees in Rabat. A press release was issued after the meeting, on 10 January 2007, which contained a categorical denial of the charge that any persons holding documents attesting to their application for asylum or refugee status were expelled and a rebuttal of all reports of ill-treatment of those expelled in December 2006.

4.2 The State party asserts that the operation was conducted strictly in accordance with legal procedure and that it has never expelled foreigners who are in the country legally or who hold refugee status. Some of the persons subject to the order of 23 December 2006 were in possession of false asylum applications supplied by traffickers.

4.3 In the second place, the State party maintains that domestic remedies have not been exhausted, inasmuch as no complaint has ever been lodged with the Moroccan courts concerning the events discussed in this communication.

Complainants' comments on the State party's observations

5.1 By letter of 17 October 2007, the complainants' counsel reaffirms that they were, in fact, among the persons subject to the expulsion order. He goes on to state that it is often the case that refugees who are duly recognized by UNHCR do not hold a Moroccan residence permit, which is needed in order to work and to "exist" administratively in the country. This permit, which is issued by the Office of Refugees and Stateless Persons of the Ministry of Foreign Affairs and Cooperation, had not been granted to the complainants. It is therefore possible that these persons were not regarded as belonging to the category of documented applicants for asylum or refugee status to which the press release of 10 January 2007 referred.

5.2 With regard to the exhaustion of domestic remedies, counsel reiterates the arguments put forward earlier. He recalls that the complainants were expelled before they could approach the administrative or judicial authorities. They were forced to enter Algerian territory and had therefore already left Moroccan territory, although they did return to it when the Algerian soldiers threatened to shoot at them if they did not retrace their steps.

5.3 The complainants have provided the Committee with copies of press releases issued by Amnesty International on 9 January 2007[2] and 15 January 2007[3] in which it expresses its concern about a series of violent raids in which hundreds of people — including women, minors, refugees and asylum seekers — were rounded up and forcibly displaced to the border with Algeria, where they were abandoned in the middle of the desert without any food or water.

Committee's decision on admissibility

6.1 On 4 November 2009, the Committee considered the admissibility of the communication. The Committee ascertained, as required under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

6.2 The Committee noted that the complainants were protesting the treatment to which they claim to have been subjected at the hands of the security forces from the time that the latter broke into their lodgings in Rabat until the time that the complainants were abandoned in the middle of the desert near the Algerian border. It further noted that they were arguing that such treatment was in breach of article 16, paragraph 1, of the Convention. The complainants also contended that, during that time, they were not allowed to take any legal action to challenge their expulsion, notwithstanding the provisions of Act No. 2-03 on the entry and residence of foreign nationals in Morocco and on illegal emigration and immigration. The Committee also noted that the State party challenged the admissibility of the communication on the grounds that domestic remedies had not been exhausted, given that no complaint had been lodged with a national court concerning the events discussed in the communication. The Committee noted that the complainants' counsel had explained why the complainants had not been able to appeal the expulsion. However, counsel had not indicated whether any legal action had been initiated later on, after the complainants had come back into Moroccan territory from the border. And if no such action in respect of the ill-treatment had been initiated, counsel had failed to provide an explanation as to why not. Under these circumstances, the Committee considered that the requirement that all available domestic remedies must be exhausted, stipulated in article 22, paragraph 5 (b), of the Convention, had not been met. The Committee therefore concluded that the part of the communication containing claims referring to article 16, paragraph 1, of the Convention was inadmissible.

6.3 However, the Committee considered that the reported events raised issues which should be analysed in the light of article 3 of the Convention in order to determine whether or not the complainants' expulsion to Algeria had taken place under conditions that would ensure the observance of this provision. Consequently, the Committee declared the complaint admissible insofar as it raised issues with respect to article 3 of the Convention. The Committee's decision was communicated to both parties.

Additional information from the parties

7. On 3 December 2009, following its decision on admissibility, the Committee asked the State party to submit observations by 3 February 2010 on the merits of the communication with regard to the issues raised under article 3 of the Convention. Reminders were sent to the State party on 28 February 2011, 16 June 2011, 19 June 2012 and 21 January 2013, but the State party did not submit any observations to the Committee.

[2] Amnesty International, European Union press release MDE 29/001/2007 "EU: Respond to migrants abuse in Morocco", 9 January 2007.

[3] Amnesty International, European Union press release MDE 29/002/2007 "JHA: EU should not give licence to abuse of migrants", 15 January 2007.

8. On 24 April 2013, the complainants' counsel reiterated his initial claims and pointed out that, in accordance with the State party's obligations under the Convention against Torture, the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees, the State party should have considered the complainants' asylum applications and taken a decision in that regard before deporting them. In addition, the State party should not have expelled them in a desert area on the Algerian border, given the many dangers that they would face there and the inability of the State party to ensure their survival.

9. On 22 September 2014, the State party was once again invited to provide clarification regarding the current situation of the complainants and to indicate whether they had been allowed to stay in Morocco or if they had left the country.

10.1 On 23 October 2014, the State party indicated that the names of the complainants did not appear in the expulsion order issued by the administrative and judicial authorities in respect of 230 sub-Saharan immigrants in an irregular situation nor in the records on foreign nationals present in the territory of the State party at the time of the events in question. Investigations conducted by the authorities regarding the sub-Saharan community indicated that the complainants were not among that group. Information from the UNHCR office in Morocco and the Office of Refugees and Stateless Persons of the Ministry of Foreign Affairs and Cooperation confirmed that the names of the complainants did not appear in their databases.

10.2 The State party points out that, as a result, the Moroccan authorities are unable to open a proper investigation concerning either the individuals themselves or their fate, especially since no reliable, updated information has been provided by their lawyer and since no member of the group has taken action or alleged any ill-treatment on the part of law enforcement officers. In this regard, the State party notes that, when the Committee took its decision on the admissibility of the case in November 2008, it had expressed disapproval of the fact that the lawyer had not indicated whether any complaint had been lodged regarding the alleged ill-treatment and that, if no such complaint had been filed, he had not explained why not.

10.3 In addition, the State party provides information on the introduction of a new migration policy in September 2013 that is more humane and in conformity with its international obligations. For example, on an exceptional basis, the State party began a drive in January 2014 to regularize the status of migrants in an irregular situation; that campaign is to be concluded in December 2014. Thousands of people have already begun the necessary application process. Moreover, as part of an effort to regularize the status of asylum seekers who have been recognized by UNHCR, it has processed the cases of 424 individuals from various African countries. None of the names listed in the complaint appears on the list of asylum seekers or on the list of persons in an irregular situation who are applying for a residence permit. The State party asserts that the above-mentioned information demonstrates its good faith and calls into question the credibility of the information submitted to the Committee.

Consideration of the merits

11.1 The Committee has considered the present complaint in the light of all the information made available to it by the parties, as required under article 22, paragraph 4, of the Convention.

11.2 Firstly, the Committee finds it regrettable that an excessive amount of time has elapsed before the consideration of the present complaint and notes that both parties share the blame for this.

11.3 Secondly, the Committee recalls that, pursuant to article 3, paragraph 1, of the Convention, the State party is under an obligation not to expel a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In the case at hand, the Committee notes the complainants' claims that on 23 December 2006 members of the security forces forcibly entered their homes and then took them to a police station, where they remained for several hours. Members of the security forces then bussed them to the Algerian border and left them in the desert, without adequate clothing and without shoes or food, and warned them not to return to Morocco. The Committee further notes that the expulsion was carried out extremely quickly and without notice and that the complainants had no opportunity to challenge their expulsion before the Moroccan authorities as they were not assisted by a lawyer and had not been informed of their right to appeal. The Committee also notes that the complainants were not allowed to speak with the chief of the police station where they were held for several hours so that they could show him the documents issued by UNHCR that attested to their refugee status. The Committee further notes that the border was closed at that time (and remains so to this day) and that the complainants were therefore inevitably exposed to all manner of danger and violence. In effect, according to the complainants' claims, two women were raped by unknown gunmen, and the Algerian security forces compelled the complainants to return to Moroccan territory by striking them and threatening to shoot them to death.

11.4 The Committee notes that the State party asserts that the administrative authorities issued an expulsion order dated 23 December 2006 in respect of 230 sub-Saharan immigrants in an irregular situation but that this group did not include the complainants and that the investigations undertaken by the authorities in 2014 confirmed that the complainants' names did not appear in the databases of the UNHCR office in Morocco or the Office of Refugees and Stateless Persons of the Ministry of Foreign Affairs and Cooperation. However, given that, at the time of the initial consideration of their complaint by the Committee, the complainants were on file with the UNHCR office in Morocco and had provided their file numbers to the Committee, the Committee has no reason to doubt the truth of their claims. Consequently, the Committee is of the view that the facts as described by the complainants reveal a failure on the part of the State party's authorities to assess the risks involved before sending the complainants to a State where they would risk being subjected to torture, in contravention of the principle of non-refoulement, and thus disclose a violation of article 3, paragraph 1, of the Convention, inasmuch as the complainants' expulsion to Algeria placed them in a situation in which they were in danger of being subjected to torture.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it disclose a violation of article 3, paragraph 1, of the Convention.

13. In accordance with rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the action it has taken pursuant to the above views.